In the High Court for the States of Punjab and Haryana, at Chandigarh.

R.S.A.No.4002 of 2006.
Decided on Sept 07,2007.

H.V.P.N/U.H.B.V.N.Ltd and others -- Appellants.

vs.

Jagdish Duggal and others -- Respondents.

Present: Mr.Vikas Suri,Advocate,for the appellants

Mr.R.P.Kansal,Advocate,for the respondents

Permod Kohli, J:(Oral)

This is a Civil Second Appeal filed by the defendants in this case against the concurrent findings recorded by both the Courts below.

Briefly stated the facts as available on record are that a raid was conducted in the shop of the respondents/plaintiffs on February 09,2001 by defendant No.3., and seal of the meter was allegedly found to be fake. After testing the meter in the laboratory, the appellants herein, passed order No. 391/T-5 B/CA dated February 27,2001, for recovery of Rs. 38,236/- as penalty in respect of Consumer No. ZC-1449. The Consumer challenged the order in a Civil Suit No. 153 of November 22,2001,in the Court of Civil Judge(Junior Division),Ambala City. The trial

Court vide judgment dated August 08,2005, found that the order is not sustainable and decreed the suit of the respondents/plaintiffs declaring the order as nullity and consequently, directed the appellants to refund the amount.

The present appellant preferred an appeal in the Court of Addl. District Judge, Ambala, against the judgment of the trial Court. The Appellate Court vide its impugned judgment and decree dated April 29,2006, dismissed the appeal and affirmed the findings of the trial Court on all the issues It is against this judgment that the appellants have come up in appeal before this Court.

It has been vehemently argued on behalf of the appellants that the mere fact that a fake seal was found by laboratory itself is sufficient to infer theft of electricity by the Consumer. According to the appellants, the seal A.M-10, which was found on the meter of the respondents was not in operation at the relevant time and for this, he has relied upon the report of the laboratory. The appellants in the order dated February 27,2001,impugned in the suit, stated that the seal is fake. The laboratory report does not say whether the seal is fabricated by the plaintiffs/Consumers or it is different than the seal of the same number, which was also put in circulation by the department, though during the period February 06,1994 to August 02,1996. It is the admitted case of the appellants that the seal AM-10 was in circulation between the period February 06,1994 to August 02,1996. Both the Courts below have concurrently found that the department has failed to prove that there was theft of electricity. In these circumstances, the findings recorded

by both the Courts below, cannot be interfered. No substantial question of law arises . No merit.

The appeal is dismissed.

Sept 07,2007 **(Permod Kohli)**
RR **Judge**